IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 166 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

B. L. FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 166 of 1992
MRS MAUNA BHATT FOR MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 28/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following questions have been referred for our opinion in respect of the assessment year 1984-85:-

"1. Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee trust was not required to deduct tax at source and that the provisions of section 194A of the Income-tax Act are not applicable to the assessee trust?

2. Whether, the Appellate Tribunal is right in law and on facts in holding that interest under section 201 (1A) of the Act is not leviable and thereby deleting the same?

2. The assessee is a private specific trust. The beneficiaries are known and their shares are determinate. The beneficiaries are individuals and HUFs. The assessee paid income by way of interest to certain parties but did not deduct Income-tax on said interest income at the time of payment. Section 194-A of the Income-tax Act, 1961 laid down that any person, not being an individual or a Hindu Undivided Family who is responsible for paying any income by way of interest shall, at the time of credit of such income to the account of payee or at the time of payment thereof, whichever is earlier, deduct the income-tax thereon at the rates in force. If the assessee trust came in the category of "individual" or "HUF" within the meaning of those expressions in section 194-A, the assessee trust would not be under any legal obligation to deduct the income-tax under said provision. On the other hand, if the assessee trust did not come in the category of "individual" or "HUF" within the meaning of those expressions in said section, the assessee trust would be under legal obligation to deduct the income-tax under said provision, and on failure to do so, the Income-tax Officer would be entitled to direct deposit of amount along with penal interest u/s. 201(1A) of the Act. The Income-tax Officer held that assessee trust did not come in the category of "individual" or "HUF" within the meaning of said section and as such, on its failure to deduct Income-tax at the time of payment of income by way of interest, it had made itself liable to pay interest u/s. 201 (1A) of the Act. The Income-tax Officer accordingly levied penal interest and directed the assessee to deposit TDS amount alongwith penal interest.

The assessee succeeded in appeal before the CIT (Appeals) who held that the trustees came in the category of "individual" or "HUF" and therefore there was no legal obligation to deduct Income-tax under section 194A of the Income-tax Act at the time of payment of income by way of interest. The Tribunal confirmed the said decision. Hence this reference at the instance of the revenue.

3. We have heard Mrs. Mauna Bhatt, learned Standing Counsel for the petitioner - revenue. Though served, none appears on behalf of the respondent - assessee.

4. At the hearing of the reference today, our attention is drawn to the decision dated 6.11.2001 of this Court in ITR No.152 of 1993 and connected matters wherein this Court has followed the decision of this Court in M.L. Family Trust v. State of Gujarat, (1995) 213 ITR 152. In the said case the assessee filed an application for quashing the complaint against the Trust being prosecuted for offences relating to non-deduction of tax under Section 194A of the Income-tax Act. In that case it has been specifically held that the status of the trustees would be that of individual and section 194A of the Income-tax Act would not apply and therefore there was no question of deduction of tax and hence the complaint was liable to be quashed.

Following the above decision, we answer both the questions referred to us in the affirmative i.e., in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)